

Thomas Kane

August 18, 2011

<p style="text-align: center;">UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA</p> <p>-----</p> <p>Chaim Lowenstein,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs. No.10-CV-02857-SRN-AJB</p> <p>Tom Kane, Junior; and Deitz-Kane and Associates Insurance Agency, Inc.,</p> <p style="text-align: center;">Defendants.</p> <p>-----</p> <p style="text-align: center;">The Deposition of THOMAS KANE, JR., taken pursuant to Notice of Taking Deposition, taken before Vicki A. Gardner, a Notary Public in and for the County of Ramsey, State of Minnesota, taken on August 18, 2011, at 701 4th Avenue South, Minneapolis, Minnesota, commencing at approximately 9:00 a.m.</p>	<p style="text-align: center;">1 PROCEEDINGS</p> <p>2 (Deposition Exhibit Numbers 1, 2 and 3 were</p> <p>3 marked for identification.)</p> <p>4 THOMAS KANE,</p> <p>5 called as a witness, being first duly sworn,</p> <p>6 was examined and testified as follows:</p> <p>7 * * *</p> <p>8 EXAMINATION</p> <p>9 * * *</p> <p>10 BY MR. GODFREAD:</p> <p>11 Q. All right, Mr. Kane. I'm Paul Godfread. I</p> <p>12 know we have already met. I am the attorney</p> <p>13 for Mr. Lowenstein, the plaintiff in the</p> <p>14 matter. Have you done a deposition before or</p> <p>15 been deposed before?</p> <p>16 A. One time in my life, yeah.</p> <p>17 Q. Okay. Well, the only thing I'm going to ask</p> <p>18 is that you speak slowly and clearly so</p> <p>19 everything can be transcribed. Wait until</p> <p>20 I'm done with the question before answering</p> <p>21 just to make sure everything can be recorded</p> <p>22 clearly.</p> <p>23 A. Very good.</p> <p>24 MR. GODFREAD: Okay. Any</p> <p>25 stipulations that anyone is wanting to put on</p>
<p>1 APPEARANCES:</p> <p>2</p> <p>3 ON BEHALF OF THE PLAINTIFF:</p> <p>4 Paul Godfread</p> <p>5 100 South Fifth Street</p> <p>6 Suite 1900</p> <p>7 Minneapolis, Minnesota 55402</p> <p>8</p> <p>9 ON BEHALF OF THE DEFENDANT:</p> <p>10 Thomas Okoneski</p> <p>11 2223 Ariel Street North</p> <p>12 Maplewood, Minnesota 55109</p> <p>13</p> <p>14 Also present was Peter Nikolai.</p> <p>15</p> <p>16 ***</p> <p>17 INDEX</p> <p>18 DEPOSITION OF THOMAS KANE, JR.</p> <p>19</p> <p>20 Examination: Page</p> <p>21 Mr. Godfread 3</p> <p>22</p> <p>23 Exhibits:</p> <p>24 1, 2 and 3 3</p> <p>25</p>	<p>1 the record ahead of time?</p> <p>2 MR. OKONESKI: Paul, I would just</p> <p>3 say at the outset that we are here under the</p> <p>4 understanding that Tom Kane is being deposed.</p> <p>5 MR. GODFREAD: Yes.</p> <p>6 MR. OKONESKI: And he happened to</p> <p>7 be the principal of another defendant, but</p> <p>8 that defendant is not being deposed.</p> <p>9 So if inquiries start to get into</p> <p>10 the Dietz-Kane side of things, we are going</p> <p>11 to have to object to that. So I don't know</p> <p>12 -- I didn't see anything on your list that</p> <p>13 looked like the Dietz-Kane defendant might be</p> <p>14 inquired about today.</p> <p>15 But that would be a separate</p> <p>16 deposition. A separate notice and so forth.</p> <p>17 So just so we are on the record before we get</p> <p>18 started just on that subject matter, that's</p> <p>19 the only thing of clarification I need at</p> <p>20 this time, I think.</p> <p>21 MR. GODFREAD: All right. And I</p> <p>22 have given you each a copy of three different</p> <p>23 exhibits that will be used today, just to ask</p> <p>24 questions about them.</p> <p>25 I know <u>Exhibit 1</u> should be your</p>



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<p>1 answers to interrogatories and you answered 2 on behalf of yourself and on behalf of 3 Dietz-Kane Insurance. But I think that for 4 the most part I will be able to just use 5 answers on behalf of Kane himself for this 6 deposition. 7 MR. OKONESKI: Okay. Well, there 8 aren't any answers from Dietz-Kane in here 9 because those were separate, correct? 10 MR. GODFREAD: Actually, this 11 exhibit included both. But, like I said, I 12 think we can -- we should be able to limit 13 questions to his answers for his own -- 14 MR. OKONESKI: Okay. 15 MR. GODFREAD: On behalf of 16 himself. 17 MR. OKONESKI: I think in here we 18 generally objected to Dietz-Kane's questions. 19 We might have answered some anyhow subject to 20 those objections. But Dietz-Kane doesn't 21 have separate interrogatories to it. 22 Do we need to mark this as an 23 exhibit? 24 MR. GODFREAD: I have already given 25 her copies.</p>	<p>1 A. I had stucco on my home that I experienced 2 water intrusion. So it was with a 3 contractor. 4 Q. Okay. Have you ever been convicted of a 5 felony? 6 A. No. 7 Q. Have you ever been convicted of a crime 8 involving deceit or dishonesty? 9 A. Never. 10 Q. Some of the facts at issue in this case are 11 sort of technical. How would you describe 12 your technical background, technical 13 knowledge? 14 MR. OKONESKI: I am going to object 15 to that as far too broad. Can you narrow it 16 to an industry? Thank you. 17 BY MR. GODFREAD: 18 Q. As to internet domain names, what would you 19 say your knowledge of internet or domain 20 names is? 21 A. Not very much, no. 22 Q. Like how much? 23 A. Well, not very much. I'm not an IT person, 24 if that's what you are asking me. 25 Q. Sure. Okay. Let's move onto your</p>
<p>1 MR. OKONESKI: Okay, thanks. 2 MR. GODFREAD: Exhibit 2 is a "who 3 is." I just printed that out. I believe 4 it's the same one I sent to you but it's 5 merely for illustration as an email. 6 I believe you have seen this as 7 part of the New York action. 8 MR. OKONESKI: Okay. Well, you can 9 lay the foundation with Mr. Kane. 10 MR. GODFREAD: Sure. I just wanted 11 to make sure you had a copy of each. 12 BY MR. GODFREAD: 13 Q. Mr. Kane, just a little bit of background. 14 Have you ever been a witness in a legal 15 proceeding? 16 A. No, I have not. 17 Q. Have you ever been, other than this lawsuit 18 or New York one before it, have you been a 19 party in a lawsuit? 20 A. Not against me, no. 21 Q. Not as a defendant, you mean? 22 A. Right. 23 Q. Have you been a plaintiff in a lawsuit? 24 A. Yes. 25 Q. What was the nature of that lawsuit?</p>	<p>1 relationship with Mr. Lowenstein. Before we 2 get to that, what was your business 3 background? 4 A. Through my entire career? 5 Q. Maybe just some highlights. Right now, you 6 have an insurance agency? 7 A. Yes, I do. 8 Q. What did you do before that? 9 A. I have done insurance for about 34 years. 10 There was a period of time where I ran 11 another company with a partner and we did 12 book publication and things of that nature. 13 Q. Have you had any side businesses while 14 running the insurance company? 15 A. I'm not sure I know what you mean by a side 16 business. 17 Q. Business dealings other than insurance? 18 A. I just explained that I had another company. 19 Q. During the you said 30-some years of working 20 in the insurance business, have you had any 21 other business dealings that weren't 22 insurance business? 23 A. I am not sure I understand the question. 24 Q. Well, for example, like -- it's fairly 25 straightforward. Other than insurance, did</p>



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<p>1 you have even a part-time business or 2 anything like that? 3 A. As I told you, I had another company that I 4 worked in with a partner and I did that for 5 20 years simultaneously to my insurance 6 business. 7 Q. Okay. What was that? What did that business 8 involve? 9 A. We had books published each year. 10 Q. That's the book publishing one. I 11 misunderstood your answer. 12 A. I'm sorry. 13 Q. No problem. How long have you known Mr. 14 Lowenstein? 15 A. You know, I'm really sorry I can't give an 16 exact date on that but I would say that we 17 were working together for about two years, I 18 think, and I maybe knew him a year before 19 that. 20 But I couldn't give an exact date 21 without going back to look up certain 22 records. 23 Q. Is that two years from today or when? 24 A. No, not from today. So, I want to say that 25 maybe it was around 2005 or 4. I can't say</p>	<p>1 An I, on behalf of that company, pursued him 2 due to the size of his company and so forth 3 to have them entertain the idea of bringing 4 this product to market with the computers 5 that they produced. 6 Q. When you met Lowenstein, you reached out to 7 him at that time or you sought him out, is 8 that fair to say? 9 A. Sure. 10 Q. And then maybe a year after that is when you 11 started working together on Armor Core? 12 A. I don't know if it was exactly a year. But 13 what ended up happening was things broke down 14 between the CEO of the company that owned the 15 product that I was trying to help out. 16 And, when I say broke down, what I 17 mean by that is Lowenstein had samples of the 18 product that they were going to be doing 19 testing and ultimately nothing was happening. 20 So that CEO had requested for 21 Lowenstein to send the stuff back. At that 22 stage of the game, Lowenstein had expressed 23 his disappointment, et cetera, et cetera. 24 But we had continued conversations about the 25 entire idea and principle behind data</p>
<p>1 for sure. 2 But we engaged in a business 3 together called Armor Core Technologies. 4 Q. That was the first you had any kind of 5 interaction you had with Lowenstein was Armor 6 Core? 7 A. No. 8 Q. What was before Armor Core? 9 A. I was helping out a company called -- I can't 10 remember the name of the company. But it was 11 a company I had independently invested in 12 that they were looking to bring their data 13 recovery product to market. 14 And I kind of came aboard without 15 being paid or anything like that, but to help 16 them get the product out into the sales 17 channel. And that was when I met Lowenstein. 18 Q. For this business, would you say your role 19 was primarily an investigator or were you 20 doing some work with this business? 21 A. As I said, I was helping them without 22 monetarily being compensated to bring that 23 product to market. 24 So I attended a couple of IT shows, 25 trade shows. That is where I met Lowenstein.</p>	<p>1 recovery and so forth. 2 Do you want me to go into more 3 detail on that? 4 Q. Maybe a little more detail on how -- I mean, 5 if you had been running the insurance company 6 and didn't have technical background, how did 7 you find this data recovery product and how 8 were you intending -- that may be a multiple 9 question. 10 How did you find this data recovery 11 product in the first place? 12 A. It was introduced to me as an investment 13 opportunity. 14 Q. And how were you intending to take it to 15 market without -- as you said, you don't have 16 technical or IT background. What was your 17 proposal to bring it to market? 18 A. To simply open the doors. What I was being 19 referred to as was the gate keeper. 20 Q. If you could turn your attention now to 21 <u>Exhibit 1</u>. Have you seen this document 22 before? 23 A. Yes, I have. 24 Q. The answers within it are answers that you 25 provided.</p>



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<p>13</p> <p>1 A. I would say yes. I signed the document.</p> <p>2 Q. They are your answers for each of the</p> <p>3 interrogatories?</p> <p>4 A. Sure.</p> <p>5 Q. Interrogatory one involves identifying people</p> <p>6 with knowledge about the allegations or</p> <p>7 claims in this lawsuit. And you listed Maria</p> <p>8 Albright, U.S. postal inspector. When did</p> <p>9 you first meet Maria Albright?</p> <p>10 A. I don't have the actual date, but I believe</p> <p>11 it was in July of 2008. She and another</p> <p>12 federal person came into my office.</p> <p>13 Q. So they came to you, you didn't go to them?</p> <p>14 A. That's correct.</p> <p>15 Q. When they came to your office, what were they</p> <p>16 there for? Did they say?</p> <p>17 A. Yeah, they were going to arrest me.</p> <p>18 Q. Did they say what for?</p> <p>19 A. Well, initially, they had a bunch of file</p> <p>20 folders that they were interrogating me on,</p> <p>21 assuming that I was a person involved in some</p> <p>22 legal matters.</p> <p>23 Q. The legal matters relate to this case?</p> <p>24 A. Are you referring to the -- when you say</p> <p>25 "this case" are you talking about --</p>	<p>15</p> <p>1 That calls for speculation but go ahead and</p> <p>2 try to do what you can as far as your recall</p> <p>3 allows.</p> <p>4 A. They were at my office for three days. After</p> <p>5 they left, I was given the assignment, if you</p> <p>6 will, to provide them additional -- all of</p> <p>7 what I could, which I always just wanted to</p> <p>8 cooperate with them.</p> <p>9 You know, it became clear to me --</p> <p>10 just for the record -- during those three</p> <p>11 days, things that I had suspected and was</p> <p>12 trying to determine on my own, I was very</p> <p>13 close to ultimately figuring out what was</p> <p>14 going on.</p> <p>15 And I wanted to do nothing but</p> <p>16 cooperate with them to clear myself from any</p> <p>17 illegal activities.</p> <p>18 BY MR. GODFREAD:</p> <p>19 Q. What had you suspected?</p> <p>20 A. I suspected that there was fraud taking place</p> <p>21 by Lowenstein.</p> <p>22 Q. Why did you suspect that?</p> <p>23 A. Well, for a number of reasons. Specifically,</p> <p>24 my suspicions came about in November of 2007</p> <p>25 when he wanted me to bring additional</p>
<p>14</p> <p>1 Q. Lowenstein versus Kane, District of</p> <p>2 Minnesota.</p> <p>3 MR. OKONESKI: Well, I'm going to</p> <p>4 object to that. Counsel knows exactly what</p> <p>5 claims are involved in this.</p> <p>6 MR. GODFREAD: I do. I don't</p> <p>7 understand how --</p> <p>8 MR. OKONESKI: Just let me finish,</p> <p>9 Paul, then you can have your chance.</p> <p>10 And you are asking a layman for</p> <p>11 legal conclusions. But I will also tell Mr.</p> <p>12 Kane that if you will ask the question again,</p> <p>13 you can try to answer the question. Okay?</p> <p>14 We have the objection on the record.</p> <p>15 BY MR. GODFREAD:</p> <p>16 Q. All right. What do you believe Maria</p> <p>17 Albright knows about this that would relate</p> <p>18 to this case, the Lowenstein v Kane?</p> <p>19 A. All she would know at this point is that</p> <p>20 Lowenstein had placed a suit against me</p> <p>21 regarding the domains.</p> <p>22 Q. Was it roughly 2008, she had contacted you.</p> <p>23 How frequently did you communicate after</p> <p>24 that?</p> <p>25 MR. OKONESKI: I'm going to object.</p>	<p>16</p> <p>1 investors into our company.</p> <p>2 I had agreed to that. However, I</p> <p>3 insisted that at that stage of the game I get</p> <p>4 books for the company to see what was going</p> <p>5 on. He had always taken care of all those</p> <p>6 duties.</p> <p>7 The books could not be produced.</p> <p>8 We were several months into excuses as to why</p> <p>9 they couldn't be produced. Ultimately, when</p> <p>10 they were produced, it lacked in many areas.</p> <p>11 And in the month of February --</p> <p>12 Tom, should I -- excuse me. Should I just</p> <p>13 give him these details right now?</p> <p>14 MR. OKONESKI: Well, it's a long</p> <p>15 narrative and typically we don't like these</p> <p>16 long narratives. But I think you should</p> <p>17 probably go ahead and get the basics on the</p> <p>18 table and we'll let Mr. Godfreed take it</p> <p>19 further if he wants.</p> <p>20 A. Sure. So in February of '08, I received a</p> <p>21 phone call from a company that went on to</p> <p>22 tell me that one of our company checks had</p> <p>23 been attempted to be cashed, although they</p> <p>24 felt that they caught the person.</p> <p>25 And I had no idea what they were</p>



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<p>17</p> <p>1 talking about. But it led me to go back to 2 previous conversations that I had with 3 Lowenstein, which all had to do with checks 4 he was having sent to the office that he 5 needed to have forwarded back to New York. 6 These were what he referred to as 7 rebate checks for his web company. 8 MR. OKONESKI: I'm sorry, excuse 9 me. What was the name of the company? Do 10 you know. 11 THE WITNESS: Web Commerce. Or Web 12 Com 247. 13 MR. OKONESKI: Thanks. 14 A. At that point in time, I called that company 15 back. I took their name and phone number, 16 after I had a conversation with Lowenstein 17 because he told me that I had nothing to 18 worry about there and blah, blah, blah. 19 I just simply wasn't going to 20 accept all the excuses anymore. I wanted our 21 attorney involved, which ultimately we did 22 get our attorney involved. 23 BY MR. GODFREAD: 24 Q. Was that Mr. Okoneski or a different 25 attorney?</p>	<p>19</p> <p>1 Vic LeLauries. Am I saying that right? 2 A. DeLauries. 3 Q. How long have you known Vic? 4 A. I would say I have known Vic for about ten 5 years. 6 Q. Has he been an employee of Dietz-Kane or any 7 other companies that you have owned or worked 8 for? 9 A. No. 10 Q. Has he been like a contractor for Dietz-Kane? 11 MR. OKONESKI: I'm going to object 12 to that question. If you want to depose 13 Dietz-Kane, you have got to get them in here, 14 Paul. 15 MR. GODFREAD: You placed this on 16 his own answer. Maybe I'll ask more 17 generally. 18 BY MR. GODFREAD: 19 Q. In what capacity do you know Vic? 20 A. He is an IT person. 21 Q. And you have hired him for IT-related 22 services? 23 A. Not for me personally. But he has done work 24 for my insurance agency in the past. 25 Q. What kind of work, would you say?</p>
<p>18</p> <p>1 A. No, it was the attorney that worked for the 2 company that Lowenstein and I were engaged 3 in. 4 Q. Who was that? 5 A. Her name was Patricia. I forget the last 6 name but I can certainly -- 7 Q. Okay. 8 A. It's all there. 9 Q. Just wanted to clarify. 10 A. Sure. So at that stage of the game, that's 11 when things really started to escalate where 12 there was an awful lot of dishonesty and 13 deception and lack of trust now on my part 14 with him. 15 Q. Sure. 16 A. So. 17 Q. Okay. And any of these rebate checks were 18 getting mailed to St. Paul or New York or 19 where were they getting mailed to or from? 20 A. St. Paul. That's where my office is. 21 Q. Did you cash any of these checks? 22 A. Never. 23 Q. Or deposit them in Armor Core accounts? 24 A. No. 25 Q. The person you listed on interrogatory one is</p>	<p>20</p> <p>1 A. Well, in my business we have computers and 2 occasionally we become infected or a computer 3 could have some malfunction. 4 Also, from a website standpoint, he 5 develops websites. Things of that nature. 6 Q. I believe in interrogatory 2 you mention some 7 of what -- I will give you a second to look 8 at that. 9 Vic DeLauries has knowledge of 10 plaintiff creating emails purportedly from 11 Kane to various parties but that were 12 actually sent by Plaintiff. 13 What emails are you referring to 14 there? 15 A. Well, so, not too long after the postal 16 inspectors had been in my office I received a 17 phone call from one of the vendors that we 18 had used within Armor Core. 19 I had not spoken to this vendor for 20 sometime. In fact, I had not spoken to any 21 of our vendors for months at that point in 22 time because I was disengaged for the company 23 to move forward. 24 In that phone call he asked me if 25 everything was okay and I said, well, not</p>



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<p>21</p> <p>1 really. He said, "I wondered," he said, 2 "because I received the craziest email that I 3 thought you would want to know about." I 4 said, "Okay. What's that?" 5 And so he sent the email to me of 6 which in that particular email it was 7 preposterous. It laid out that my insurance 8 business was going to take over this coffee 9 company and so forth. 10 I had gone back to -- immediately 11 once I got ahold of that, I sent that off to 12 the postal inspector letting her know how I 13 viewed what was going on there and it looked 14 like he was trying to set me up for 15 something. 16 She had informed me that you can 17 always determine where emails are originated 18 from. 19 Q. Who is she? 20 A. Maria Albright. 21 Q. Okay. 22 A. And I said okay. And so I went back to my IT 23 person, Vic, and he said as long as we get it 24 in its original format and I got that from 25 the vendor and sent that off to Vic.</p>	<p>23</p> <p>1 to that. It calls for a legal conclusion. 2 But you can go ahead and try to answer if you 3 can, Tom. 4 A. I'm not sure I understand the question. So 5 if you could ask that again. 6 BY MR. GODFREAD: 7 Q. Well, you listed it as a document you have 8 that would have facts relevant to this case. 9 What facts are in that complaint? 10 MR. OKONESKI: Just a moment, Tom. 11 If you can't recall, that's perfectly 12 acceptable. If you want to review the 13 complaint that Mr. Godfread is talking about, 14 that's a reasonable request at a deposition. 15 If you feel you need to review the 16 complaint so you can refresh your 17 recollection on what facts are actually 18 contained in there, you are entitled to do 19 that. Otherwise, you don't have to guess. 20 I don't know if we have one here 21 at the deposition. Do we, Paul? 22 MR. GODFREAD: I don't have one 23 printed up but I could get one printed up. 24 Maybe I will ask a little narrower question. 25</p>
<p>22</p> <p>1 And he in turn showed me how you 2 determine where emails are generated from. 3 And it turned out to be an IP address in New 4 York. 5 So I felt fairly comfortable at 6 that point in that if this ever came up again 7 that I could certainly -- anyone that has 8 knowledge in that world would be able to 9 prove out that I had nothing to do with 10 anything of that at all. 11 Q. Sure. Do you ever travel to New York? 12 A. I think I was in New York one time in my life 13 in the mid '80s. That was for the other 14 publishing company. I was in and out the 15 same day. 16 Q. Never since then? 17 A. No. 18 Q. Okay. Also on interrogatory 2 for yourself, 19 this would be listed as Page 5 in Exhibit 1, 20 lists the complaint of the United States of 21 America verses Lowenstein as, I guess, having 22 facts relating to this case. 23 In what way does that case relate 24 to this one? 25 MR. OKONESKI: I'm going to object</p>	<p>24</p> <p>1 BY MR. GODFREAD: 2 Q. Are there any facts in that complaint that 3 you recall that would relate to this case? 4 A. And so, I just want to be clear, Paul. 5 Q. Yeah. 6 A. Are you asking me the allegations made 7 against me by Lowenstein, how they relate to 8 the postal matter? 9 Q. Well, your answer was to the question in this 10 interrogatory was what documents might you 11 have that would have facts relevant to this 12 case. 13 And you answered complaint of U.S. 14 v Lowenstein. And I guess I am asking why 15 specifically, what facts did you think were 16 in that complaint that were relevant to this 17 case? 18 A. Okay. So, I think I understand the question. 19 My answer to that would be I was fully 20 cooperating with the postal inspector's 21 office. And in doing so, I made copies of 22 everything that had to do between Lowenstein 23 and myself, which included from the time that 24 the Armor Core website area was under my 25 control.</p>



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<p style="text-align: right;">25</p> <p>1 They then knew of everything, all</p> <p>2 the correspondence that was going on between</p> <p>3 Lowenstein and myself which had to do with my</p> <p>4 attempts to get his items back to him once I</p> <p>5 learned of those, which also had to do</p> <p>6 with -- just so that the paper trail would</p> <p>7 always be there, knowing that I was always up</p> <p>8 front and honest with everybody from day one.</p> <p>9 So, to answer your question more</p> <p>10 specifically, everything was copied and</p> <p>11 provided to them.</p> <p>12 Q. Okay. Turn to your answer to interrogatory</p> <p>13 number 6 which is on Page 9. No, sorry. I</p> <p>14 don't believe that's correct.</p> <p>15 Sometime during the postal service</p> <p>16 investigation, is it true you became the</p> <p>17 administrator of some of the domain names</p> <p>18 that had been owned by Lowenstein?</p> <p>19 A. Actually, from a timing perspective, I</p> <p>20 believe that I had just taken over the Armor</p> <p>21 Core stuff with Go Daddy, I want to say</p> <p>22 within days before they walked into my</p> <p>23 office.</p> <p>24 Q. So this would be like Armor Core -- I'm</p> <p>25 making this up -- Armor Core dot com, if that</p>	<p style="text-align: right;">27</p> <p>1 Because I didn't have the user name</p> <p>2 and password to get into Armor Core, Go Daddy</p> <p>3 was willing to provide it to me if I could</p> <p>4 answer a few questions, one of which was the</p> <p>5 last four digits of this credit card, which</p> <p>6 was under my name.</p> <p>7 And they, in turn, allowed me into</p> <p>8 that -- I'm not sure what you call that.</p> <p>9 Okay. But at that point, I could control the</p> <p>10 Armor Core stuff.</p> <p>11 Q. Okay.</p> <p>12 A. And I'm not an IT person, but what I did</p> <p>13 ultimately learn is that the way that gets</p> <p>14 set up was that Armor Core was the</p> <p>15 administrator and underneath all that there</p> <p>16 were a bunch of different domain names.</p> <p>17 Why they were there, I have no idea</p> <p>18 because they had nothing to do with Armor</p> <p>19 Core. But they were there.</p> <p>20 The fact is, in order to retain the</p> <p>21 Armor Core stuff in talking with the people</p> <p>22 at Go Daddy, I needed to change the password</p> <p>23 and these items. And we did that.</p> <p>24 By the following Monday, I had</p> <p>25 received a phone call from the local police</p>
<p style="text-align: right;">26</p> <p>1 was the domain name. It would be something</p> <p>2 relating to the Armor Core name?</p> <p>3 A. Correct.</p> <p>4 Q. Did you also become the domain administrator</p> <p>5 for Coffee 247 dot com?</p> <p>6 A. Okay, so here is what I would answer to that</p> <p>7 due to how things occurred. Armor Core</p> <p>8 Technologies had an account with Go Daddy.</p> <p>9 This was on a Friday, Paul, that I had made</p> <p>10 -- there were many things that led up to</p> <p>11 this.</p> <p>12 But I had wanted to understand more</p> <p>13 about what was going on behind the scenes</p> <p>14 within Armor Core, which was controlled</p> <p>15 always by Lowenstein.</p> <p>16 I discovered there may be a way</p> <p>17 that I could get into the Armor Core website</p> <p>18 and emails and all this stuff through the</p> <p>19 help of Vic and made an effort to get in</p> <p>20 there.</p> <p>21 And the way in which we were able</p> <p>22 to go in there relates to other things that</p> <p>23 had led up to that, which was my</p> <p>24 understanding of a credit card being used to</p> <p>25 pay for things by Lowenstein.</p>	<p style="text-align: right;">28</p> <p>1 department questioning me as to being a cyber</p> <p>2 criminal. I gave them a brief description of</p> <p>3 what had occurred.</p> <p>4 Q. Which police department is this?</p> <p>5 A. The St. Paul Police Department. And I, in</p> <p>6 turn -- which by the way there is a separate</p> <p>7 division within the St. Paul Police</p> <p>8 Department about cyber criminal.</p> <p>9 Q. Okay.</p> <p>10 A. I, in turn, contacted Lowenstein to find out</p> <p>11 what he had done to create such drama. And</p> <p>12 at that stage of the game, what had happened</p> <p>13 was due to all the efforts made on his part,</p> <p>14 the Go Daddy folks locked everything down.</p> <p>15 So I could not get into it, he</p> <p>16 could not get into it, nothing.</p> <p>17 Q. You said you first -- this was Friday when</p> <p>18 you had first gone to Go Daddy?</p> <p>19 A. It was on a Friday.</p> <p>20 Q. By Monday, St. Paul police had contacted you</p> <p>21 about potential cyber crime issues?</p> <p>22 A. Correct.</p> <p>23 Q. And you had mentioned you made the decision</p> <p>24 to do something about the domain names before</p> <p>25 the postal inspector contacted you. Is that</p>



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<p>29</p> <p>1 correct?</p> <p>2 A. Say that again.</p> <p>3 Q. I think earlier -- maybe I am wrong, maybe I</p> <p>4 misheard -- you said that you made the</p> <p>5 decision to do something about the Armor Core</p> <p>6 domains even before the postal service had</p> <p>7 contacted you?</p> <p>8 A. Everything I just explained to you happened</p> <p>9 before that --</p> <p>10 MR. OKONESKI: Just a second, Tom.</p> <p>11 My recollection is you asked him or</p> <p>12 he volunteered the information that because</p> <p>13 of suspicious business activity related to</p> <p>14 Lowenstein and Armor Corp Technologies, Mr.</p> <p>15 Kane wanted to investigate what was going on.</p> <p>16 Part of the investigation included</p> <p>17 trying to figure out -- he wanted to get into</p> <p>18 the emails and he wanted to look and see what</p> <p>19 was happening with the Armor Core website.</p> <p>20 He is a members of Armor Corp. He is</p> <p>21 entitled to do that at least.</p> <p>22 So his answer was that he was</p> <p>23 trying to investigate Lowenstein's --</p> <p>24 MR. GODFREED: I'm just clarifying</p> <p>25 the time frame.</p>	<p>31</p> <p>1 Q. Your dealings with Go Daddy, that was also</p> <p>2 before the postal service contacted you?</p> <p>3 Maybe I will be more specific.</p> <p>4 You had mentioned you logged in.</p> <p>5 You were able to control Armor Core and</p> <p>6 whatever other domains were in the same</p> <p>7 account.</p> <p>8 That was before postal service</p> <p>9 contacted you, as well?</p> <p>10 A. Yes.</p> <p>11 Q. Had you made an attempt to see if it was</p> <p>12 possible to administer just the domain names</p> <p>13 that related to Armor Corp or names that</p> <p>14 sounded like Armor Core and looked like Armor</p> <p>15 Core?</p> <p>16 A. Yes.</p> <p>17 Q. Was that possible?</p> <p>18 A. Well, there were several things that were</p> <p>19 happening simultaneously. I had a</p> <p>20 conversation with Go Daddy. While they were</p> <p>21 on the phone with me, they were explaining to</p> <p>22 me how to move certain domains from the Armor</p> <p>23 Core stuff to a different domain.</p> <p>24 We spent about, I would say, an</p> <p>25 hour or so on the phone trying to make that</p>
<p>30</p> <p>1 MR. OKONESKI: I know. I'm just</p> <p>2 telling you what you just asked my client was</p> <p>3 actually an accusation, which was that you</p> <p>4 decided you were going to do something about</p> <p>5 the domain names at that time and his answer</p> <p>6 was -- the inference is that he had made up</p> <p>7 his mind he was going to take control of</p> <p>8 those domain names.</p> <p>9 But his actual answer was, all he</p> <p>10 wanted to do was investigate and see what was</p> <p>11 going on in there. So not intentionally, but</p> <p>12 I think you are putting words in my client's</p> <p>13 mouth.</p> <p>14 MR. GODFREED: Is that an</p> <p>15 objection?</p> <p>16 MR. OKONESKI: Yes.</p> <p>17 BY MR. GODFREED:</p> <p>18 Q. All right. So maybe I can find a better way.</p> <p>19 Your decision to investigate the domains,</p> <p>20 that decision happened before you had been</p> <p>21 contacted by the postal service?</p> <p>22 A. When you say "domains," you are saying</p> <p>23 plural. My decision to find out what was</p> <p>24 going on with Armor Core was prior to the</p> <p>25 postal people coming in.</p>	<p>32</p> <p>1 happen but the stuff didn't move over for</p> <p>2 some reason.</p> <p>3 But then simultaneously throughout</p> <p>4 this period of time or this time frame, I had</p> <p>5 been in communications with Lowenstein to</p> <p>6 allow him to be able to get back into the</p> <p>7 site.</p> <p>8 But I had reservations because I</p> <p>9 didn't want to release the Armor Core stuff</p> <p>10 that was there. But, do keep in mind that</p> <p>11 there was a period of time -- again, without</p> <p>12 going back to look at emails, there was a</p> <p>13 period of time where everything was locked</p> <p>14 down so neither myself or Lowenstein could</p> <p>15 get into that area.</p> <p>16 As a result of that, ultimately the</p> <p>17 Go Daddy folks did their investigation and</p> <p>18 ultimately released everything back to me</p> <p>19 and I suspect that's because on their due</p> <p>20 diligence they probably discovered that the</p> <p>21 things were actually on a credit card of mine</p> <p>22 with my name. It's my guess.</p> <p>23 However, that took some time. I</p> <p>24 can't remember how many weeks. But I believe</p> <p>25 it was during that time frame with things</p>



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<p>33</p> <p>1 being locked down that the postal folks came 2 in. 3 And again I would need to double 4 check that record. But I think that would be 5 pretty accurate. Which means I couldn't 6 share that with them at that point when they 7 were in my office. 8 Q. Couldn't share what exactly? 9 A. I couldn't share with them the Armor Core 10 email stuff or any of that because I didn't 11 have access to it yet. 12 Q. Okay. 13 A. I hadn't taken time. I hadn't -- none of 14 that. 15 Q. Right. Was it your intention in transferring 16 to yourself the domain names -- what was your 17 intention in doing that? 18 MR. OKONESKI: Well, just a second. 19 Objection. It's another accusation, Paul. I 20 mean, I don't think you did it intentionally, 21 but what Mr. Kane said was he became the 22 administrator. 23 And what you have just said to him 24 is when you took control of -- or you 25 transferred the domain names to Kane himself.</p>	<p>35</p> <p>1 MR. OKONESKI: Objection. It calls 2 for a legal conclusion. You can tell him 3 what you think. 4 A. Yeah, I would guess there is a big 5 difference. 6 BY MR. GODFREAD: 7 Q. Okay. Maybe now is as good a time as any to 8 turn to <u>Exhibit 2</u>. <u>Exhibit 2</u> is the Go Daddy 9 report. 10 A. I show it as number 3. 11 MR. OKONESKI: I might have mis- 12 marked it, too, Paul. 13 BY MR. GODFREAD: 14 Q. I have it as 2. But just for the record, we 15 are looking at the one with Go Daddy dot com 16 on the top. Web screen shot printout. Have 17 you seen this before? 18 A. No, I have not. 19 Q. Have you seen something similar to this 20 before? 21 A. No. 22 Q. This was something I printed from Go Daddy 23 and I believe I mailed a copy of this to your 24 attorney. But as you can see, it shows your 25 name, Tom Kane, as the registrant</p>
<p>34</p> <p>1 Those are two different concepts. 2 MR. GODFREAD: How so? 3 MR. OKONESKI: Transferring domain 4 names is you are trying to take title to 5 these things and own them. He just wants to 6 be the administrator. 7 MR. GODFREAD: Is there a technical 8 difference you would like to put on the 9 record between being the administrator of the 10 domain name and being the owner of the domain 11 name? 12 MR. OKONESKI: Yes. If you are 13 going to ask about -- he has testified he 14 became the administrator. He never said that 15 he transferred title to those domain names to 16 himself. So we can keep that distinction. 17 MR. GODFREAD: I'm just not sure 18 what the distinction is in the context of a 19 domain name. 20 A. Then you should check with Go Daddy. They 21 did it. Not me. 22 BY MR. GODFREAD: 23 Q. You believe there is a distinction between 24 being the administrator of a domain name and 25 being the owner of a domain name?</p>	<p>36</p> <p>1 administrative contact and technical contact 2 for 247 coffee dot com. 3 Do you believe that is accurate? 4 A. No. 5 Q. In what way do you believe it is inaccurate? 6 A. From my standpoint, the registrant for Armor 7 Core is what I had done. 8 Q. Meaning what? 9 A. Meaning when I was able to get into the Go 10 Daddy website area for Armor Core, my name 11 had to be on there in a different password in 12 order to lock Lowenstein out. 13 Q. Was it your intention to lock Lowenstein out 14 from, let's say, 247 coffee dot com? 15 A. Of course not. 16 Q. Was it your intention to lock him out from 17 domain names relating to Armor Core? By that 18 I mean any domain name that would have Armor 19 Core, something similar in the name? 20 A. For Armor Core, yes. 21 Q. Okay. But not for any other domain names? 22 A. Of course not. 23 Q. Did you know that that might be the effect of 24 the changes you had made with Go Daddy? 25 A. No, I did not.</p>



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<p style="text-align: right;">37</p> <p>1 Q. But since then, you know that has been the 2 effect, is that true? 3 A. No, because no one can have access to it. 4 When Lowenstein placed his first suit, 5 Go Daddy locked everything down. So they 6 have owned it all since. It's out of my 7 hands. 8 Q. So it's your -- basically, I'm paraphrasing, 9 you are saying Go Daddy owns 247 coffee dot 10 com? 11 A. I say that -- 12 MR. OKONESKI: I'm going to object, 13 Tom. It calls for a legal conclusion. So 14 that's on the record. 15 But you can try to answer the 16 question. 17 A. Paul, I do not know how Go Daddy does their 18 business. I don't understand how the domain 19 stuff all goes down. 20 I have never opened one on my own. 21 I paid people to do that stuff. I don't 22 understand the technical part of it at all. 23 BY MR. GODFREAD: 24 Q. Okay. 25 A. But if you are asking me at one point was I</p>	<p style="text-align: right;">39</p> <p>1 I just want out. 2 Q. Did you list any of those emails in your 3 answer to interrogatory 2 as documents that 4 would relate to this case? 5 MR. OKONESKI: Paul, I'm going to 6 object to that question on the basis that the 7 interrogatories speak for themselves. If you 8 will take a look at paragraph 6 on Page 6. 9 MR. GODFREAD: Yes. 10 MR. OKONESKI: You will note that 11 other than the above listed documents, I have 12 said there are many, many documents in my 13 office that relate to this case. 14 You were invited to come over, 15 review those documents, copy them at your 16 leisure, and you haven't taken the -- I was 17 going to say the time, but that's not very 18 kind. 19 You haven't taken the opportunity 20 yet to do that and I wouldn't expect that Mr. 21 Kane is going to remember any details on 22 probably what amounts to 300 or 400 23 documents. 24 BY MR. GODFREAD: 25 Q. All right. But the emails you refer to just</p>
<p style="text-align: right;">38</p> <p>1 aware that those other domains sat under the 2 Armor Core name, yes, and I made all kinds of 3 attempts to get those back into Lowenstein's 4 hands. 5 Q. What kind of attempts? 6 A. If he didn't produce the emails to you, then 7 I guess at some point we could produce them. 8 There were many attempts to -- I 9 had even wanted to give him a password at one 10 point in time for what was the area where the 11 things didn't really transfer over to. 12 Again, it was all fruitless 13 attempts when you have someone on the other 14 end that wants to make it look like he is a 15 victim of something and he is doing 16 everything in his power to not cooperate to 17 get things resolved. 18 And coincidentally, throughout that 19 whole process, I had been making every effort 20 possible to just get away from this 21 individual with the whole Armor Core deal. 22 And there is all kinds of emails 23 that will show that. And things kept 24 unfolding at the end which that's why it 25 always led me to say what is going on here?</p>	<p style="text-align: right;">40</p> <p>1 recently, there is no reference to those in 2 this interrogatory. That's true. In your 3 answer to this interrogatory? 4 A. I think it is referenced here. There is all 5 kinds of documents. I mean, am I the 6 defendant here? Or am I the plaintiff? Do 7 you want me to -- what do you want me to do? 8 What would you like from me? 9 MR. OKONESKI: No, Tom. Just a 10 second. You don't get to ask questions. 11 Just go ahead. 12 If you don't understand a question, 13 if you don't want to answer it, just say so. 14 But you don't need to ask questions. 15 A. I don't understand the question and I think 16 that it's been answered in these documents 17 and I think my attorney has also given you 18 the permission to go and look at other 19 things. 20 BY MR. GODFREAD: 21 Q. Sure. Have you stated that part of your 22 intent in becoming the administrator of the 23 websites was to preserve evidence? Is that a 24 fair statement? 25 A. Yes.</p>



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<p style="text-align: right;">41</p> <p>1 Q. What kind of evidence did you want to 2 preserve? 3 A. All of the emails and email addresses that 4 were set up in the account Lowenstein had 5 control of. 6 And once I was able to get in 7 there, I could see everything that he had and 8 was doing. And I wanted to preserve that. 9 Q. You were able to preserve this evidence by 10 transferring the administrative rights to the 11 domains? 12 A. By being able to change the password and so 13 forth for him to get in there, yes. 14 Q. Did that necessarily involve transferring the 15 domain? Not just changing the password, 16 sorry, but did that necessary involve 17 transferring or changing the administrative 18 contact information for all of the domains? 19 A. Well, there is only one area that you change 20 things in. And, again, I'm going by memory. 21 When my IT guy was in there, it was just 22 about changing up my name and confirming the 23 credit card information and the password. 24 And as I mentioned before, if you 25 were to go into a Go Daddy -- which that was</p>	<p style="text-align: right;">43</p> <p>1 A. No. 2 Q. The email, would possibly appear to be from 3 you but are you saying you did not write that 4 email? 5 A. That's correct. 6 Q. Earlier, you had said you had worked with Vic 7 in determining whether you could find out the 8 source of the email. Was this one of the 9 emails you had looked at to see if you could 10 determine the source of the email? 11 A. No. 12 Q. Were there other emails that were like this 13 in subject? 14 A. No. 15 Q. Is the email address Tom at Armor 247 dot com 16 one that you have used? 17 A. Yeah. I mean, when we had the Armor Core 18 Technology business, I think there was an 19 email set up under that name for me, yes. 20 I want to verify that, but I think 21 so. 22 Q. Subject to verification. If you later say 23 no, it was something Tom K at -- all right. 24 You believe it was an email you used? 25 A. Tom at Armor 247?</p>
<p style="text-align: right;">42</p> <p>1 the only time I was ever in there -- that 2 part of it, you would see that it's one block 3 of information that gets answered as I am 4 attempting to control the Armor Core piece. 5 And then anything that's underneath 6 the Armor Core stuff, I imagine that that 7 change applied to all. Guessing. 8 Q. You said you were attempting to preserve 9 evidence. While doing that, did you make 10 copies of any of these emails? 11 A. Oh, yeah. 12 Q. How about the websites that were posted or 13 that these domains resolved to? 14 A. No. 15 Q. Didn't make any copies of the websites? 16 A. No. 17 Q. Let's take a look at Exhibit 3. The emails 18 is what I have as Exhibit 3. Have you seen 19 this document before? 20 A. I think I did, yes. 21 Q. When did you see it? 22 A. When the suit was originally brought forward 23 in the State of New York against me. I 24 believe this document was produced to me. 25 Q. But before that, you had never seen that?</p>	<p style="text-align: right;">44</p> <p>1 Q. Right. 2 A. Yes. 3 Q. So the email reads -- I don't know if you 4 want to read it -- but in the email there is 5 a second line before the signature: You can 6 start by paying me \$5,000 money order. Send 7 it to Dietz-Kane Insurance, 674 6th Street 8 East, St. Paul, Minnesota 55106. 9 Now, you have already said you 10 didn't write this email. Have you ever made 11 a similar demand of Lowenstein? 12 A. The only thing I would answer to that -- 13 again, I would want to refer back to emails, 14 but we had email exchanges going to try and 15 dilute the company, to determine who would 16 take the company and who wouldn't. 17 Would the number \$5,000 be in there 18 somewhere? Maybe. I don't know. But, you 19 know, clearly, this is a cut and paste thing 20 because it's different -- if you can't see 21 that with the naked eye, I don't know what to 22 tell you there, Paul. 23 Q. How do you know it's a cut and paste? 24 A. You can see the type face is different. 25 There is one type face. (Indicating). There</p>



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<p>45</p> <p>1 another type face.</p> <p>2 Q. Okay. But I mean, can you confirm it wasn't</p> <p>3 just a different type face used within the</p> <p>4 email?</p> <p>5 A. Well, I would imagine I can't. I can only go</p> <p>6 by what I see with the naked eye.</p> <p>7 Q. You don't know that it was cut and paste.</p> <p>8 It's just your suspicion based on the fact</p> <p>9 that there is two different type faces?</p> <p>10 A. No. It would be my suspicion based on the</p> <p>11 behavior of your client.</p> <p>12 Q. Such as if you are saying his behavior, why</p> <p>13 would you say that he would make up a phony</p> <p>14 email?</p> <p>15 A. Because, as I told you before, I had received</p> <p>16 an original email from an old vendor that</p> <p>17 proved out that it came from Lowenstein</p> <p>18 himself.</p> <p>19 Q. As to that email, how would you say that was</p> <p>20 proved out?</p> <p>21 A. I explained earlier that if you have an</p> <p>22 original email, there is a header to it,</p> <p>23 okay? And in that header, it shows the IP</p> <p>24 address where it was produced from.</p> <p>25 Now, this isn't an original. This</p>	<p>47</p> <p>1 com?</p> <p>2 A. I'm going to guess that it was the case only</p> <p>3 because of the timing when the postal</p> <p>4 inspector people came in. But what I would</p> <p>5 also add to that, I believe that was the time</p> <p>6 frame that I had already been instructed by</p> <p>7 the federal folks to not communicate with</p> <p>8 Lowenstein any longer.</p> <p>9 Q. You had not communicated with Lowenstein</p> <p>10 after getting that instruction?</p> <p>11 A. That's correct.</p> <p>12 Q. Not by email?</p> <p>13 A. Not by any manner.</p> <p>14 Q. Not by phone?</p> <p>15 A. No.</p> <p>16 Q. Have you ever sent an e-mail suggesting that</p> <p>17 you were the owner of 247 Coffee, the name</p> <p>18 247 Coffee?</p> <p>19 A. I'm going to say no.</p> <p>20 Q. How about the domain name 247 Coffee dot com?</p> <p>21 A. Well, again, no.</p> <p>22 Q. With the same question as to Brewlee?</p> <p>23 A. No.</p> <p>24 Q. Same as to 247 Java?</p> <p>25 A. No.</p>
<p>46</p> <p>1 is a copy, of course. So you probably have</p> <p>2 an original somewhere that you could go and</p> <p>3 investigate that.</p> <p>4 Q. Okay. But you don't currently have an</p> <p>5 original of this email?</p> <p>6 A. Of course not. I have never seen this email</p> <p>7 other than when it was produced to me by the</p> <p>8 attorney in New York, which was used as</p> <p>9 evidence in the State of New York.</p> <p>10 Q. But it appears to come from Armor 247 dot com</p> <p>11 domain and it's dated August 17, 2008.</p> <p>12 Who was, by August 17, 2008, were</p> <p>13 you the administrator of Armor 247 dot com?</p> <p>14 A. I would have to go back and look at that.</p> <p>15 But, I guess to answer your question in</p> <p>16 short, I did not produce that document. The</p> <p>17 only time I ever saw that document was when</p> <p>18 it was shown to me by the attorney.</p> <p>19 And that's all I can tell you on</p> <p>20 that, Paul.</p> <p>21 Q. You didn't have someone else produce it on</p> <p>22 your behalf?</p> <p>23 A. Of course not.</p> <p>24 Q. Okay. And you are not sure if by August 17th</p> <p>25 you were the administrator of Armor 247 dot</p>	<p>48</p> <p>1 Q. Okay. Just confirming.</p> <p>2 A. Sure.</p> <p>3 Q. Have you ever printed any materials with</p> <p>4 those names?</p> <p>5 A. Never.</p> <p>6 Q. Or had someone print materials?</p> <p>7 A. Never.</p> <p>8 Q. Created any websites using those names?</p> <p>9 A. No.</p> <p>10 Q. Social media accounts, like Facebook?</p> <p>11 A. No.</p> <p>12 Q. But other than Go Daddy, no one else you have</p> <p>13 indicated that you were the rightful owner --</p> <p>14 maybe I will ask it separately because I know</p> <p>15 you are making a distinction. Rightful owner</p> <p>16 of those domain names?</p> <p>17 A. I have never claimed to own those names.</p> <p>18 Q. Have you made any claims that you were the</p> <p>19 rightful administrator of those names?</p> <p>20 A. No.</p> <p>21 Q. Has anyone asked you if you or Dietz-Kane --</p> <p>22 I know you are going to object -- has anyone</p> <p>23 asked you if you were affiliated with 247</p> <p>24 Coffee?</p> <p>25 MR. OKONESKI: I will object on</p>



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<p style="text-align: right;">49</p> <p>1 behalf of the Dietz-Kane, but you can answer</p> <p>2 on behalf of yourself.</p> <p>3 A. No.</p> <p>4 BY MR. GODFREAD:</p> <p>5 Q. Same for Brewlee?</p> <p>6 A. Correct.</p> <p>7 Q. Have you ever used or spoken -- let's say</p> <p>8 start real broad. Have you ever spoken those</p> <p>9 names over the phone?</p> <p>10 A. No, I have not.</p> <p>11 Q. When did you first register the Dietz-Kane</p> <p>12 dot com domain?</p> <p>13 A. Actually, that's a great question. Vic</p> <p>14 DeLauriers and Chaim Lowenstein who I knew as</p> <p>15 Chaim, who I now understand it's a different</p> <p>16 name -- actually coordinated efforts to build</p> <p>17 the website for Dietz-Kane insurance of which</p> <p>18 I paid for to Lowenstein for his efforts to</p> <p>19 do that for me.</p> <p>20 Q. Okay. When was that?</p> <p>21 A. I can't be a hundred percent accurate, but</p> <p>22 I'm going to say it was sometime in 2007.</p> <p>23 Q. Okay. Dietz-Kane has always been</p> <p>24 administered by yourself? I should say</p> <p>25 Dietz-Kane dot com, the domain name?</p>	<p style="text-align: right;">51</p> <p>1 A. Originally, more than likely by telephone.</p> <p>2 And if I wouldn't have been successful there</p> <p>3 it would have been by emails and so forth.</p> <p>4 Q. Do you remember roughly what you said?</p> <p>5 A. Yeah, the whole deal had already been blown</p> <p>6 out of proportion and the folks at Go Daddy</p> <p>7 locked everything down at that stage.</p> <p>8 I explained to him the damage that</p> <p>9 he had done to now that everything was locked</p> <p>10 down, they said that it would take two to</p> <p>11 four weeks for their investigation and blah,</p> <p>12 blah, blah.</p> <p>13 And that he had smeared my name</p> <p>14 because I got the police calling me. I</p> <p>15 wanted my name cleared with the Go Daddy</p> <p>16 folks that I wasn't a cyber criminal.</p> <p>17 And they deserved an explanation</p> <p>18 for all what he created on Sunday to make</p> <p>19 that happen for Monday.</p> <p>20 Q. What did you tell Go Daddy then about the</p> <p>21 transfer?</p> <p>22 A. That's not the way it works, Paul. You don't</p> <p>23 get to tell Go Daddy. You don't get to talk</p> <p>24 to them.</p> <p>25 Q. Tell me how it works.</p>
<p style="text-align: right;">50</p> <p>1 A. I have never actually been into the</p> <p>2 Dietz-Kane -- behind the scene website stuff.</p> <p>3 I would have to revert that question to Vic,</p> <p>4 my IT guy, to understand how that's really</p> <p>5 set up.</p> <p>6 Q. Vic has probably taken care of most of</p> <p>7 Dietz-Kane dot com --</p> <p>8 A. That's correct.</p> <p>9 Q. -- technical matters, let's say?</p> <p>10 A. I think so. But when it was built, it was</p> <p>11 built by Lowenstein under the direction of</p> <p>12 Vic because it was Lowenstein's desire to</p> <p>13 want to learn how to do that stuff.</p> <p>14 Q. Learn how to build websites?</p> <p>15 A. Correct.</p> <p>16 Q. When you took administrative control let's</p> <p>17 say of the Armor Core and related domain</p> <p>18 names, did you contact Lowenstein to tell him</p> <p>19 that you had done that?</p> <p>20 A. Well, obviously on that following Monday</p> <p>21 because I was dealing with the St. Paul</p> <p>22 Police Department.</p> <p>23 Q. So on Monday you contacted Lowenstein?</p> <p>24 A. Yes.</p> <p>25 Q. How did you contact him?</p>	<p style="text-align: right;">52</p> <p>1 A. I had to send them an email to explain my</p> <p>2 position, which I did.</p> <p>3 Q. What was your position? How did you explain</p> <p>4 your position?</p> <p>5 A. That there was a dispute between my partner</p> <p>6 and I with our Record Technologies and that I</p> <p>7 felt that a reasonable amount of time, things</p> <p>8 could get straightened out but have to do</p> <p>9 your thing and we'll do our thing.</p> <p>10 Q. So you basically told them it was a business</p> <p>11 dispute?</p> <p>12 A. With Armor Core Technologies.</p> <p>13 Q. Right.</p> <p>14 A. It was more than just a dispute, I think at</p> <p>15 that point I told them there was questionable</p> <p>16 activities within our business that I was</p> <p>17 trying to understand.</p> <p>18 The email is there somewhere. In</p> <p>19 fact, that's with the postal people, too.</p> <p>20 Q. The St. Paul police, had you contacted the</p> <p>21 St. Paul police or had someone else contacted</p> <p>22 the St. Paul police?</p> <p>23 A. Lowenstein had contacted the St. Paul police</p> <p>24 of which they in turn responded back to me.</p> <p>25 Q. So on Monday, St. Paul police had known about</p>



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<p>53</p> <p>1 this and it was after St. Paul police had</p> <p>2 contacted you that you contacted Lowenstein?</p> <p>3 A. Correct.</p> <p>4 Q. So if you contacted Lowenstein, you are</p> <p>5 assuming he already knew something about the</p> <p>6 domain names, something being changed about</p> <p>7 the domain names?</p> <p>8 A. He lodged the complaint.</p> <p>9 Q. Had you filed any complaints of your own</p> <p>10 before that Monday when the St. Paul police</p> <p>11 was there?</p> <p>12 A. No.</p> <p>13 Q. When was the most recent time you talked to</p> <p>14 Maria Albright?</p> <p>15 A. I'm not sure what you mean by that.</p> <p>16 Q. Most recently.</p> <p>17 A. Just about two weeks ago.</p> <p>18 Q. What was that conversation about?</p> <p>19 A. Well, in that conversation, I let her know</p> <p>20 that I was now being forced to go to a</p> <p>21 deposition, which is absolutely insane.</p> <p>22 I was informed, as I had been in</p> <p>23 the past, that this would be a separate</p> <p>24 matter that I would need to handle directly</p> <p>25 with Lowenstein and all that.</p>	<p>55</p> <p>1 A. No. There are public records on what had</p> <p>2 occurred out there though. And I was curious</p> <p>3 to know what was going on.</p> <p>4 Q. So you read at least public records?</p> <p>5 A. I saw the guilty plea on his part.</p> <p>6 Q. Where did you see that?</p> <p>7 A. Where did I see that?</p> <p>8 Q. Yeah.</p> <p>9 A. I contacted the courthouse and got a copy of</p> <p>10 it.</p> <p>11 Q. But, I mean, you must have heard of it by</p> <p>12 then to have decided to contact the</p> <p>13 courthouse?</p> <p>14 A. Paul, I was always very interested in what</p> <p>15 was going on because, quite frankly, I was</p> <p>16 told that they were going to take care of</p> <p>17 this matter within a couple of weeks after</p> <p>18 they left my office.</p> <p>19 This matter that has taken place</p> <p>20 out in the State of New York against me and</p> <p>21 this state should have never occurred and the</p> <p>22 fact of the matter is that had they reacted</p> <p>23 as quickly as they said they were going to --</p> <p>24 Q. Who is "they"?</p> <p>25 A. -- there would never have been an opportunity</p>
<p>54</p> <p>1 But that she had her hands full</p> <p>2 because he now had a different understanding</p> <p>3 of his guilty pleading for his criminal</p> <p>4 activities.</p> <p>5 Q. Did she say anything to you about this</p> <p>6 deposition?</p> <p>7 A. No.</p> <p>8 Q. Is there anyone else in the New York matter</p> <p>9 that you have been in contact with, talking</p> <p>10 to you about this case?</p> <p>11 MR. OKONESKI: Excuse me, Paul.</p> <p>12 Are you talking about the --</p> <p>13 BY MR. GODFREAD:</p> <p>14 Q. The U.S. v Lowenstein matter.</p> <p>15 MR. OKONESKI: Okay, thank you.</p> <p>16 A. No.</p> <p>17 BY MR. GODFREAD:</p> <p>18 Q. The U.S. attorneys, you have not been in</p> <p>19 contact with them?</p> <p>20 A. No.</p> <p>21 Q. And they have not been in contact with you?</p> <p>22 A. No.</p> <p>23 Q. Nor Mr. Lowenstein's attorney in that case,</p> <p>24 they have not contacted you, to your</p> <p>25 knowledge?</p>	<p>56</p> <p>1 for Lowenstein to lodge such allegations</p> <p>2 against me.</p> <p>3 Q. Who is "they"?</p> <p>4 A. Because it was never the intention. "They"</p> <p>5 would be the folks from the federal postal</p> <p>6 inspector's office.</p> <p>7 MR. GODFREAD: Okay. I think we</p> <p>8 are coming to the end. I just want to make</p> <p>9 sure I'm not missing anything.</p> <p>10 All right. I think that's it.</p> <p>11 Thank you very much.</p> <p>12 MR. OKONESKI: Just a second. Mr.</p> <p>13 Kane, we have the opportunity -- your counsel</p> <p>14 has the opportunity to ask you some questions</p> <p>15 if we wish to do that. Off the record.</p> <p>16 (Discussion held off the record.)</p> <p>17 (A short break was taken.)</p> <p>18 MR. OKONESKI: Back on the record.</p> <p>19 Thank you for the break, Paul. We don't have</p> <p>20 any further questions of Mr. Kane at this</p> <p>21 time.</p> <p>22 Are you ready to close, Paul?</p> <p>23 MR. GODFREAD: That's it. Thank</p> <p>24 you for coming here and submitting to the</p> <p>25 questions. Did you want to sign or waive</p>



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<p>57</p> <p>1 signature? How do you want to do that?</p> <p>2 MR. OKONESKI: No, we'll do the</p> <p>3 read and sign, please.</p> <p>4 That just means we have a chance to</p> <p>5 read the transcript and make sure everything</p> <p>6 is recorded correctly. And sometimes you can</p> <p>7 make some clarifications and things like</p> <p>8 that. You might want to check for spellings</p> <p>9 and things.</p> <p>10 THE WITNESS: Okay.</p> <p>11 (The deposition concluded at 10:30 a.m.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>59</p> <p>1 Page No. _____ Line No. ____ Change</p> <p>2 to: _____</p> <p>3 Reason for change: _____</p> <p>4 Page No. _____ Line No. ____ Change</p> <p>5 to: _____</p> <p>6 Reason for change: _____</p> <p>7 Page No. _____ Line No. ____ Change</p> <p>8 to: _____</p> <p>9 Reason for change: _____</p> <p>10 Page No. _____ Line No. ____ Change</p> <p>11 to: _____</p> <p>12</p> <p>13</p> <p>14</p> <p>15 SIGNATURE: _____</p> <p>16 THOMAS KANE, JR.</p> <p>17 DATE: _____</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>58</p> <p>1 DEPOSITION ERRATA SHEET</p> <p>2 Our Assignment No. 262990</p> <p>3 Case Caption: LOWENSTEIN</p> <p>4 vs.</p> <p>5 KANE-DEITZ</p> <p>6 DECLARATION UNDER PENALTY OF PERJURY</p> <p>7 I declare under penalty of perjury</p> <p>8 that I have read the entire transcript of</p> <p>9 my Deposition taken in the captioned matter</p> <p>10 or the same has been read to me, and</p> <p>11 the same is true and accurate, save and</p> <p>12 except for changes and/or corrections, if</p> <p>13 any, as indicated by me on the DEPOSITION</p> <p>14 ERRATA SHEET hereof, with the understanding</p> <p>15 that I offer these changes as if still under</p> <p>16 oath.</p> <p>17 Signed on the ____ day of _____, 2011.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>60</p> <p>1 STATE OF MINNESOTA)</p> <p>2)</p> <p>3 COUNTY OF RAMSEY)</p> <p>4)</p> <p>5 Be it known that I took the</p> <p>6 deposition of THOMAS KANE, Junior, on August</p> <p>7 18, 2011;</p> <p>8 That I was then and there a</p> <p>9 notary public in and for the County of</p> <p>10 Ramsey, State of Minnesota, and that by</p> <p>11 virtue thereof I was duly authorized to</p> <p>12 administer an oath;</p> <p>13 That the witness before</p> <p>14 testifying was by me first duly sworn to</p> <p>15 testify the whole truth and nothing but the</p> <p>16 truth relative to said cause;</p> <p>17</p> <p>18 That the testimony of said</p> <p>19 witness was recorded in stenotype by myself</p> <p>20 and transcribed into typewriting under my</p> <p>21 direction, and that the deposition is a true</p> <p>22 record of the testimony given by the witness</p> <p>23 to the best of my ability;</p> <p>24 That I am not related to any of</p> <p>25 the parties hereto nor interested in the</p> <p>outcome of the action;</p> <p>That the reading and signing by</p> <p>the witness and Notice of Filing were not</p> <p>waived;</p> <p>Witness my hand and seal this 22nd</p> <p>day of August, 2011.</p> <p>_____</p> <p>Vicki A. Gardner</p> <p>COURT REPORTER</p>



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